

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
BENTON DIVISION

MELISSA C. WINCHESTER,)
vs. Plaintiff,) Case No.
vs.)
TEAM DRIVE AWAY, INC. and) Williamson County Circuit Court
DION R. EVANS,) Case No. 2021L40
Defendants.) **JURY TRIAL DEMANDED**

NOTICE OF REMOVAL

Defendant Team Drive Away, Inc., pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, files this Notice for the Removal of the above entitled action to the United States District Court for the Southern District of Illinois, Benton Division, and for grounds therefore respectfully states:

A. Venue is Proper in the United States District Court for the Southern District of Illinois, Benton Division.

1. The above-entitled action, now pending in the Williamson County, Illinois Circuit Court, is a civil action at law brought by Plaintiff, above-named, against Defendants to recover damages.
2. The incident alleged by Plaintiff has arisen within the jurisdiction or boundaries of the United States District Court, Southern District of Illinois, Benton Division.
3. Pursuant to 28 U.S.C. §1446(a), venue lies in the United States District Court for the Southern District of Illinois, Benton Division, because Williamson County, Illinois is within the Southern District of Illinois, Benton Division.

B. The Procedural Requirements for Removal are Satisfied.

4. The Complaint, which is attached hereto as part of **Exhibit 1**, was served upon Defendant Team Drive Away, Inc. on April 21, 2021 and, therefore, the time for filing this Notice of Removal under 28 U.S.C. § 1446 has not yet expired.

5. Written notice of the filing of this Notice of Removal is being given to Plaintiff and a copy of this Notice of Removal is being filed with the Williamson County Clerk of Court pursuant to 28 U.S.C. § 1446(d).

6. A copy of all known process, pleadings and orders from the state case are attached collectively hereto as **Exhibit 1** in accordance with 28 U.S.C. § 1446(a).

C. There is Diversity Amongst the Parties.

7. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §1332(a) and removal to this Court is proper pursuant to 28 U.S.C. §1441(b)(2) because none of the Defendants are a citizen of this State, and there is complete diversity of citizenship between all parties.

8. Plaintiff Melissa Winchester was at all relevant times a citizen and resident of Illinois.

9. Defendant Team Drive Away, Inc. is a corporation organized and existing under the laws of the State of Kansas, with its principal place of business in Olathe, Kansas. Therefore, Defendant Team Drive Away, Inc. is a citizen and/or resident of the State of Kansas.

10. Defendant Dion Evans was at all relevant times a citizen and resident of California.

D. The Amount in Controversy Exceeds \$75,000.

11. The matter and amount in controversy in this action, exclusive of interest and costs, exceeds the sum or value of Seventy-Five Thousand Dollars (\$75,000.00) as required by 28 U.S.C. § 1332(a).

12. “If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332 (a), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy, *except that* – (A) the notice of removal may assert the amount in controversy if the initial pleading seeks – (ii) a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded.” 28 U.S.C. §1446(c)(2)(A)(ii).

13. In Illinois, a prayer for relief in an action for injury to the person shall not plead ad damnum “except to the minimum extent necessary to comply with the circuit rules of assignment where the claim is filed.” 735 ILCS 5/2-604.

14. Plaintiff alleges in her Complaint that she was caused to sustain injuries and damages in excess of \$15,000. See Exhibit 1.

15. “A removing party need not show that the plaintiff will prevail or collect more than \$75,000 if he does. The burden, rather, is to show what the plaintiff hopes to get out of the litigation; if this exceeds the jurisdictional amount, then the case proceeds in federal court unless a rule of law will keep the award under the threshold.” *See e.g. Rising-Moore v. Red Roof Inns, Inc.*, 435 F.3d 813, 816 (7th Cir. 2006).

16. Further, Plaintiff here alleges that she suffered injuries in an automobile accident after being hit by a tractor-trailer, causing personal injuries. Specifically, Plaintiff has alleged that, as a result of the accident, she “sustained serious and permanent injuries to her person and

a loss of enjoyment of life, and will in the future continue to suffer. Plaintiff further expended and became liable for and will expend and become liable for large sums of money for medical services in endeavoring to be healed and cured of said injuries. Plaintiff sustained a loss in wages.” See Exhibit 1.

E. Consent of Served Defendants

17. Defendant has no knowledge or notice that Defendant Dion Evans has been served with process in this case at the time of this Notice of Removal. *See* Williamson County Docket Sheet, attached hereto as **Exhibit 2.**

18. 28 U.S.C. §1146(b)(2)(A) provides: “When a civil action is removed solely under section 1441(a), all defendants who have been properly **joined and served** must join in or consent to the removal of the action.” (emphasis added).

19. Because Defendant has no knowledge or information that Defendant Dion Evans has been served with process in this case, Defendant Dion Evans need not consent to this removal at this time.

WHEREFORE, Defendant Team Drive Away, Inc. prays that this Honorable Court enter an Order causing said Cause No. 2021L40 of the Williamson County, Illinois Circuit Court to be removed to this Court for further proceedings, and that this Court take jurisdiction herein, and make further orders as may be just and proper.

/s/ Kevin L. Fritz

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was filed electronically with the Clerk of Court on May 18, 2021, to be served by operation of the Court's electronic filing system upon: Raymond Lawler, Lawler & Lawler, 1129 North Carbon Street, Marion, IL 62959, lawlerf@gmail.com, Attorneys for Plaintiff.

/s/ Kevin L. Fritz